

LICENCE AND SERVICE AGREEMENT, TERMS and CONDITIONS OF USE

1. DEFINITIONS

1.1 In this Agreement the following words and expressions shall have the following meanings:

- 1.1.1 “Agreement” means these terms and conditions, Schedule 1-3, Appendix A, and [reference other documents if required].
- 1.1.2 “Authorised User(s)” means an Authorised User or Authorised Users of the Service employed, contracted or granted access by the Customer having been authorised to use the Software for the Permitted Use by the Customer and being within the Permitted Number of Users.
- 1.1.3 “Confidential Information” means the non-public information that is disclosed between the parties, whether or not it is marked or identified as “Confidential Information” by the disclosing party. Confidential Information shall include, without limitation, computer programs, code, algorithms, know-how, methodology, trade secrets, formulas, processes, ideas, inventions, schematics and other technical, business, pricing and fee schedules, financial and product development plans, customer lists and Customer Data.
- 1.1.4 “Company” means MyKnowledgeMap Limited whose registered office is at Kings House, 12 King Street, York, YO1 9WP with company registration number 3954387
- 1.1.5 “Customer” means []
- 1.1.6 “Customer Data” means all data, text, images, audio, video, photographs and non-Company applications, and other content and material, in any format, provided by Customer or any of its Authorised Users that is stored in, or run on or through, the Services.
- 1.1.7 “Delivery Date” means the date on which the Service shall become available for use by the Customer as specified in Schedule 1.
- 1.1.8 “Intellectual Property Rights” means any copyright, design right, registered design right, patent, trade mark (whether registered or not), logo, trade name, brand name, domain name, database right or any similar right exercisable in any part of the world, including any application for registration of any patent, trade mark, registered design or similar transferable rights in any part of the world.
- 1.1.9 “Internet” means a global connection of computers, international in scope, networked to each other with capacity for exchange of information facilitating data transfer and communication services, such as remote login, file transfer, electronic mail and connection to websites.
- 1.1.10 “Licence” means the Licence granted by the Company to the Customer pursuant to clause 2 (Grant).

- 1.1.11 “Permitted Number of Users” means the number of Authorised Users of the Service set-up by the Customer as stated in Schedule 1.
- 1.1.12 “Permitted Use” means the use as defined in clause 3 of this Agreement.
- 1.1.13 “Related Materials” means any printed or digital materials supplied by The Company for use with the Service.
- 1.1.14 “Service” means the provision of Software, hosting, support and data processing as detailed in Appendix A, provided to the Customer by the Company.
- 1.1.15 “Service Fee” means the fee provided under this Agreement as specified in Schedule 2, which covers the Service.
- 1.1.16 “Term” the minimum term of the service agreement will be one year, with the start date defined in Schedule 1
- 1.1.17 “The Software” means the MyProgress application owned by the Company as detailed in this agreement which has granted a non-exclusive licence to the Customer to enable delivery of the Service to end users.
- 1.1.18 “Working Day” is Monday to Friday, excluding United Kingdom public holidays
- 1.1.19 “Working Hour” is 9 am to 5 pm (United Kingdom)

2. GRANT

- 2.1 In consideration for payment of the Service Fee, as detailed in Schedule 2, by the Customer and the agreement by the Customer to abide by these terms and conditions of this Agreement the Company hereby grants to the Customer a non-exclusive, non-transferable Licence to use the Software for the Permitted Use by the number of Authorised Users as described in Schedule 1 hereto in accordance with the provisions of this Agreement. All rights, not specifically granted in this licence are reserved by the Company.
- 2.2 The licence is granted for worldwide use under the terms of this Agreement.

3. USE OF THE SERVICE

- 3.1 The Customer will provide a single named contact (“the Nominated Contact”) and deputy. All enquiries, support and information requests will be made through the Nominated Contact or the deputy. The Nominated Contact and deputy are as shown in Schedule 1 hereto and can be changed with prior notification to the Company.
- 3.2 The Customer shall use its best efforts to maintain commercially reasonable security measures to safeguard the Service from access or use by any unauthorised person.
- 3.3 The Customer shall not:
 - 3.3.1 Permit other individuals to use the Service except under the terms of this agreement;
 - 3.3.2 Allow access to the Service by more registered Users than the number of users specified in the Agreement;

- 3.3.3 Licence, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way;
- 3.3.4 Modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the Service;
- 3.3.5 Copy or mirror the Service;
- 3.3.6 Redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Service;
- 3.3.7 Remove, hide or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Service;
- 3.3.8 Access or allow access to the Service for competitive purposes or for monitoring its availability or performance or for copying functionality, or deriving product ideas or for any other benchmarking purposes;
- 3.3.9 Grant any third-party access to or use of the Service as a service bureau, timesharing, subscription service or application service provider or other similar basis;
- 3.3.10 Defeat or circumvent, attempt to defeat or circumvent, or authorize or assist any third party in defeating or circumventing controls on the use of the Service;

4. PROPRIETARY RIGHTS

- 4.2 The Customer acknowledges and agrees that the Company and/or its licensors own all Intellectual Property Rights in the Service. This includes any extensions or developments to the Service that the Customer may fund or part-fund.
- 4.3 The Company confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement
- 4.2 The Customer and/or its licensors shall maintain all Intellectual Property Rights to Customer Data.

5. WARRANTIES OF THE COMPANY

- 5.1 The Company hereby warrants and represents that:
 - 5.1.1 The Company's provision of the Service pursuant to this Agreement will not violate any agreement or obligation between the Company and a third party.
 - 5.1.2 The Service will use software that has either been originally created by the Company or that the Company has obtained all necessary rights to use under the terms of this agreement.
 - 5.1.3 The Service will not infringe any copyright, patent, trade secret or other proprietary right held by any third party and the Company will obtain waivers of all moral rights which may be claimed to the extent permitted by law.

- 5.1.4 The Service will not be libellous or violate any rights of privacy and/or publicity of any third party.
- 5.1.5 The Company will take all reasonable steps to ensure that no instructions, advice or information contained in the Service will cause physical illness, injury or death to the end user.
- 5.1.6 All activities provided by the Company in connection with the Service will be performed in a professional manner and shall be of a high grade nature and quality.
- 5.2 The Company has the full right and power to enter into and perform according to the terms of this Agreement.
- 5.3 The representations, warranties and covenants contained in this Section are continuous in nature and shall be deemed to have been given by the Company at execution of this Agreement. These representations, warranties and covenants shall survive termination of expiration of this Agreement.

6. LIABILITY

- 6.1 Neither Party shall be liable to the other in contract, tort or otherwise under or in connection with this Agreement for:
 - 6.1.1 Loss of business whether direct or indirect;
 - 6.1.2 Loss of profits whether direct or indirect;
 - 6.1.3 Loss of goodwill;
 - 6.1.4 Loss of use;
 - 6.1.5 Loss of anticipated savings;
 - 6.1.6 Corruption and/or loss of data;
 - 6.1.7 Third party claims to the extent that they represent the indirect loss of a third party; and
 - 6.1.8 Any special, indirect or consequential loss,
Provided that this shall not limit the Customers right to claim for and Company liability for:
 - 6.1.9 Any direct losses to the extent that such losses are caused by any breach by the Company of its obligations under this Agreement or the negligence of the Company; and
 - 6.1.10 Any losses that can reasonably be supposed to have been anticipated by the Company as likely to arise from breach by the Company of its obligations under this Agreement to the extent that such losses are caused by any breach by the Company of its obligations under this Agreement or the negligence of the Company.
- 6.2 Any corruption and/or loss of data caused by the Company will be corrected within reason and where possible at the cost of the Company up to the limited outlined in 6.3.

- 6.3 The Company's and Customer's liability for all claims for losses, which are not direct losses made in respect of or in connection with this Agreement shall not exceed in aggregate the price paid for the Service or £1,000,000 whichever the greater
- 6.4 Any statements made in addition by agents, employees, distributors and dealer advertising or presentations, do not constitute warranties by the Company, do not bind the Company, and should not be relied upon.

7. DATA PROTECTION AND SECURITY

- 7.1 The Company agrees to ensure that it will at all times comply with the provisions and obligations imposed by the requirements of the General Data Protection Regulation and other related legislation.
- 7.2 The Customer shall own all rights, title and interests in all of the Customer Data and shall have responsibility for the legality, reliability and accuracy of this data.
- 7.3 All Customer Data covered by the Service is stored within database(s) and file system(s) hosted on Microsoft Windows Azure and managed by the Company.
- 7.4 Microsoft Windows Azure provides Tier 4 security and resilience. All data servers are UK hosted. Hosting facilities have 24-hour manned security, biometric access control, video surveillance, physical locks and have redundant power supplies, UPS and backup generators.
- 7.5 Databases and websites have automatic fail over in case of hardware failure
- 7.6 All requests to the application websites require HTTPS. Each website is backed up daily, and backups are retained for 30 days. Website access logs are stored for 7 days.
- 7.7 Access to the databases are controlled by a firewall at the database server level, and all requests require encryption. Databases have a 30-day transaction log retention, which will allow the database to be restored to any point-in-time over the last 30-day period. Fully weekly backups are also taken with 180-day retention.
- 7.8 All databases have advanced threat detection enabled, which monitors for SQL Injection acts, highlights vulnerable SQL queries, brute force attacks, and unusual login locations.
- 7.9 The Company will not share the Customer Data with any third party unless under instruction by the Customer.
- 7.10 Neither the Company nor the Customer shall disclose to any third party any confidential information of the other or make use of any such confidential information except as necessary to fulfil its obligations under this Agreement. This clause shall not apply to any information which (i) becomes generally known to the public other than by reason of an act or omission of the recipient; (ii) is required to be disclosed pursuant to any applicable laws or to any governmental statutory or advisory body to which either the Company or Customer is subject; (iii) is required to be disclosed pursuant to any court order; (iv) is disclosed by either to their professional advisers.

8. TERMINATION

8.1 This Agreement may be terminated:

8.1.2 Forthwith by either party if the other commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within thirty (30) days of being given written notice from the other party to do so; or

8.1.3 Forthwith by either party if the other commits a material breach of this Agreement which cannot be remedied under any circumstances; or

8.1.4 Forthwith by either party if the other passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or

8.1.5 Forthwith by either party if the other ceases to carry on its business or substantially the whole of its business; or

8.1.6 Forthwith by either party if the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

8.2 Upon termination of this Agreement, however occurring, the Customer will cease use of the Service immediately

8.3 Access to the Service or Customer Data following termination will be by separate negotiation.

8.4 The Company will not be able to terminate the service, however occurring, without giving the Customer 3 months written notice.

8.5 Upon termination by either party the Company will provide the Customer with a copy of Customer Data for a fixed charge of £850 + VAT. The format of the data will be to an industry standard machine-readable format.

8.6 Upon termination by either party or expiration of the Agreement, the Company will have no further obligation to store Customer Data once Section 8.5 has been satisfied. The Company shall delete all Customer Data and issue a certificate of secure data disposal to Customer within 30 days of the termination date.

9. SERVICE ACCESS

9.1 Whilst the Company endeavours to ensure that the Service is available 24 hours a day, the Company shall not be liable if for any reason the Service is unavailable at any time or for any period. The Company shall provide as appropriate and reasonably required advance notifications to the Customer of unplanned outages.

9.2 The Company will adhere to the service levels as defined in Schedule 3. Failure to do so will be a material breach falling within clause 8 above.

9.3 Maintenance breaks and upgrades will be communicated at least 14 days in advance

9.4 Access to the Service may be suspended temporarily in the case of system failure or for reasons beyond the Company's reasonable control. If this is the case you will be notified as soon as we are aware of the outages. The company will make best

endeavours to ensure any suspension of service is minimised and to provide reasonable notice of planned outages

10. TECHNICAL SUPPORT

- 10.1 Support includes access to a Monitored Support Forum encouraging community help and actively supported by the Company's support team during 9am to 5pm GMT Monday to Friday excluding public holidays in England, UK.
- 10.2 All software updates, major and minor, are provided.
- 10.3 Only the current and previous version of software is supported other than by special written arrangement.
- 10.4 Support is not intended to be a training service, does not offer technical support for use of APIs, or use of third-party tools with which our Software may be integrated.
- 10.5 Support does not cover additional work caused by critical user errors such as data loss and recovery thereof.
- 10.6 Telephone and email support is only available to customers.
- 10.7 Technical support will only be provided for bugs or errors in the Service, that are reproducible by the Company. You agree to provide the Company with full and accurate details of all bugs and errors in the Service requested by the Company. You acknowledge that, whilst the Company will use best efforts to rectify any reproducible fault as quickly as possible, the Company provides no warranty that all or any bugs or errors in the Service will be corrected.

11. FORCE MAJEURE

- 11.1 The Company will not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside our reasonable control (a "Force Majeure Event"), including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider and the Company shall be entitled to a reasonable extension of its obligations after notifying the Customer of the nature and extent of such events.

12. GENERAL

- 12.1 This Agreement contains The Company's entire understanding and agreement regarding the software, services and related materials, and supersedes any prior purchase order, communications, advertising or representations.
- 12.2 This Agreement may only be modified in a written amendment agreed by the Company and the Customer and signed by their authorised officers. If any provision of this Agreement shall be unlawful, void, or unenforceable for any reason, it shall be deemed severable from, and shall in no way affect the validity or enforceability of the remaining provisions of this agreement.
- 12.3 The Company and Customer each declare and undertake that in relation to the performance of its obligations under this Agreement it has not offered or given and will not offer or give directly or indirectly any bribe or other improper benefit or advantage, financial or otherwise; it has not demanded or accepted and will not do

so directly or indirectly, any improper payment for itself or any individual or organisation; it has not offered or given and will not offer or give any improper payment or other advantage to any public official wherever located.

12.3 This Agreement shall be governed by and construed in accordance with the law of England and the Customer and the Company hereby submit to the exclusive jurisdiction of the English courts.

12.4 The Company shall ensure that its sub-contractors will provide the necessary service levels so that Company can meet its obligations under this agreement, and will be responsible for any sub-contractors or sub-processors appointed.

13. AGREEMENT

Signed by the duly authorised representatives of the parties on the date on this agreement.

SIGNED FOR AND ON

BEHALF OF THE COMPANY (MYKNOWLEDGEMAP LIMITED)

Name:

Date:

SIGNED FOR AND ON

BEHALF OF THE CUSTOMER [REDACTED]

Name:

Date:

SCHEDULE 1

Designated hosting	Microsoft Window Azure
Hosting location	UK
Term start date	[xx/xx/xx]
Permitted number of users	[]

SCHEDULE 2

Annual Charges

[REDACTED]

Service Charges

[REDACTED]

SCHEDULE 3 - SUPPORT SERVICE LEVELS

Access to the Help Desk

Support provides 24/7 access to the MyKnowledgeMap Help Desk system (<https://myknowledgemap.zendesk.com>) for the reporting and monitoring of incidents. The Help Desk system is managed 09:00 to 17:00 GMT Monday to Friday (excluding UK public bank holidays).

Error Categorisation

The Customer will assign to each reported incident one of the following standard categories:

Category	Description
Urgent	An incident exists which has caused the system to be completely or substantially unavailable for use to the extent that there is a severe impact on the operation.
High	An incident exists which has caused the system to be partially unavailable for use to the extent that there is a significant impact on the operation.
Normal	An incident exists which requires rectification but which has only a moderate or intermittent impact on the operation.
Low	An incident exists which requires rectification but which does not have a tangible impact on the operation.

Response and Resolution Times

MyKnowledgeMap will respond to each incident in accordance with its stated category and in accordance with the average response times set out below.

Category	Description
Urgent	Investigation to commence within one Working Hour of notification. If a work-round is possible, it will be provided within six Working Hours and the incident will be re-classified as High. If software and/or database correction is required, the response will be dependent on the complexity of the correction but a target response time of twelve Working Hours will be established. The correction will be supplied through a Patch Release.
High	Investigation to commence within one Working Day of notification. If a work-round is possible, it will be provided within two Working Days and the error will be re-classified as Normal. If software and/or database correction is required, the correction will normally be scheduled for the next Maintenance Version. If, however, this is considered by the Customer to be operationally unacceptable, the Customer may request consideration for escalation to 'Urgent' status and a patch release provided.
Normal / Low	Corrected software to be available in a future Major or Maintenance Version.

System Availability: MyKnowledgeMap have a target system availability, excluding schedule maintenance, of 99.9%

Appendix A - Data Processing Agreement

AGREEMENT DATED [REDACTED]

BETWEEN:

- (1) The **Data Processor**, MyKnowledgeMap Limited whose registered office is at Kings House, 12 King Street, York, YO1 9WP, UK with company registration number 3954387 (the "**Company**"); and
- (2) The **Data Controller**, [REDACTED] (The "**Customer**")

BACKGROUND

- (A) This Agreement is to ensure there is in place proper arrangements relating to personal data passed from the Customer to the Company.
- (B) This Agreement is compliant with the requirements of Article 28 of the General Data Protection Regulation.
- (C) The parties wish to record their commitments under this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

"Data Protection Laws" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

"Data Subject" means an individual who is the subject of Personal Data;

"GDPR" means the General Data Protection Regulation;

"Personal Data" shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity, and as detailed in Schedule 1;

"Service" as defined within the MyKnowledgeMap LICENCE AND SERVICE AGREEMENT between the Customer and the Company

2. DATA PROCESSING

The Customer is the data controller for the Personal Data and the Company is the data processor for the Personal Data. The Company agrees to process the Personal Data only in accordance with Data Protection Laws and in particular on the following conditions:

- a. to process the Personal Data, as described in Schedule 1, only for the purposes to deliver the Services and strictly for no other purpose without the written authority of the Customer;
- b. ensure that all employees and other representatives accessing the Personal Data are (i) aware of the terms of this Agreement and (ii) have received comprehensive training on data protection laws and related good practice, and (iii) are bound by a commitment of confidentiality (Article 28, para 3(b) GDPR);
- c. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, complying with Article 32 of GDPR, details of those measures are set out under MyKnowledgeMap LICENCE AND SERVICE AGREEMENT (Article 28, para 3(c) GDPR);
- d. not involve any third party in the processing of the Personal Data without the consent of The Customer. Such consent may be withheld without reason. The Company warrants that it shall only engage a sub-processor where they are contractually bound to the Data Processor to the same extent as this Agreement provides.
- e. taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of the Customers' obligation to respond to requests from individuals exercising their rights laid down in Chapter III of GDPR - rights to erasure, rectification, access, restriction, portability, object and right not to be subject to automated decision making etc (Article 28, para 3(e) GDPR);
- f. immediately notify the Customer of any data security breach and no later than within 24 hours of the Company becoming aware of the breach or incident where the Personal Data may have been compromised;
- g. assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of GDPR - security, notification of data breaches, communication of data breaches to individuals, data protection impact assessments and when necessary consultation with the ICO etc, taking into account the nature of processing and the information available to the Processor (Article 28, para 3(f) GDPR);
- h. allow for audits of its data processing activity by the Customer or the Customer designated auditor.
- i. make immediately available to the Customer all information necessary to demonstrate compliance with the obligations laid down under this Agreement and allow for and contribute to any audits, inspections or other verification exercises required by the Customer from time to time (Article 28, para 3(h) GDPR); and

- j. maintain the integrity of the Personal Data, without alteration, ensuring that the Personal Data can be separated from any other information created;

4. RIGHTS OF DATA SUBJECTS

- a. To the extent the Customer, in its use of the Services, does not have the ability to correct, amend, block or delete Personal Data as required by Data Protection Laws and Regulations, the Company shall comply with any commercially reasonable written request by Customer to facilitate such actions to the extent the Company is legally permitted to do so.
- b. The Company shall, to the extent legally permitted, promptly notify the Customer if it receives a request from a Data Subject for access to, correction, amendment or deletion of that person's Personal Data. The Company shall not respond to any such Data Subject request without the Customer's prior written consent except to confirm that the request relates to the Customer. The Company shall provide the Customer with commercially reasonable cooperation and assistance in relation to handling of a Data Subject's request for access to that person's Personal Data, to the extent legally permitted and to the extent the Customer does not have access to such Personal Data through its use of the Services.

5. TERMINATION

The Customer may immediately terminate this Agreement on written notice to the Company. The Company may not terminate this Agreement without the written consent of the Customer.

Within 28 days of termination the Customer will either direct the Company to transfer the data to the Customer, enable the Customer to extract the data or securely delete the data with written assurance from the Company that the activity has been completed.

6. SUB-PROCESSORS

- a. The Customer acknowledges and agrees that Company may engage third-party sub-processors in connection with the provision of the Service.
- b. The Company will ensure that sub-processors only access and use Personal Data in accordance with the terms of the Agreement and that they are bound by written obligations that require them to provide at least the level of data protection required by data protection laws and regulations.
- c. The Company shall be liable for the acts and omissions of its sub-processors to the same extent the Data Processor would be liable if performing the services of each sub-processor directly under the terms of this addendum, except as otherwise set forth in the agreement.
- d. The following sub-processors shall be considered approved by the Data Controller at the time of entering into this data processor agreement:
 - Microsoft
 - Google

7. OBLIGATIONS OF THE DATA CONTROLLER

In consideration of the obligations undertaken by the Company in this Agreement, the Customer agrees that it shall ensure that it complies at all times with the Data Protection Legislation in relation to the Personal Data.

8. GENERAL

- a. This Agreement may only be varied with the written consent of both parties.
- b. This Agreement represents the entire understanding of the parties relating to necessary legal protections arising out of their data controller/processor relationship under Data Protection Laws.
- c. This Agreement is subject to English law and the exclusive jurisdiction of the English Courts.

Signed by the duly authorised representatives of the parties on the date on this agreement.

SIGNED FOR AND ON

BEHALF OF THE COMPANY (MYKNOWLEDGEMAP LIMITED)

Name:

Date:

SIGNED FOR AND ON

BEHALF OF THE CUSTOMER [REDACTED]

Name:

Date:

Schedule 1 Processing, Personal Data and Data Subjects

Subject matter of the processing

The subject matter of processing of personal data by the Processor is the provision of the Service to the Controller

Duration of the processing

As defined within the MyKnowledgeMap LICENCE AND SERVICE AGREEMENT.

Nature and purpose of the processing

Processing Personal Data and information provided by the Customer or the Customers authorized end users within the scope of the MyKnowledgeMap LICENCE AND SERVICE AGREEMENT to support training , education, monitoring and assessment for students.

Type of Personal Data

- Name
- Email address
- Online identifiers:
 - Username
 - IP address
 - A unique ID used internally in MyKnowledgeMap's software to identify the user

Categories of Data Subject

- TBD